

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FILED  
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2004 AUG -9 P 1:04  
U.S. DISTRICT COURT  
DISTRICT OF MASS

\_\_\_\_\_  
ANTHONY LEO,

Petitioner,

v.

\_\_\_\_\_  
COMMONWEALTH OF  
MASSACHUSETTS,

Respondent.  
\_\_\_\_\_

Civil Action No. 04-11006-JLT

MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR STAY/ABEYANCE FOR PETITION  
WRIT OF HABEAS CORPUS

Now comes the petitioner, Anthony Leo, and respectfully submits this memorandum of law in support of his motion for stay/abeyance to petition for writ of habeas corpus in the event that this court finds that the petitioner must first wait for a final decision from the Supreme Judicial Court for the Commonwealth of Massachusetts docket number #SJC-09074, to fully exhaust his state remedies.

BACKGROUND

On June 13, 2002, the petitioner, Anthony Leo, was indicted by a Worcester grand jury. See: Docket Sheet for Commonwealth v. Anthony Leo, Worcester Supreior Court criminal action no: 2002-00830 in Respondents Supplemental Answer as Exhibit 1.

On June 17, 2002, petitioner, Anthony Leo, plead not guilty to the charges and the same bail was carried over from the Worcester District Court in the amount of \$500.000.00 cash to the Worcester Superior Court "without" prejudice.

On July 18, 2002, the petitioner had a bail hearing in the Worcester Superior Court before Kern, J., See: Respondents Supplemental Answer, Exhibit 2, at pgs. 19-28. After the hearing bail remained the same at \$5,000.000.00 surity and \$500.000.00 cash.

On May 22, 2003, petitioner filed his motion to revisit bail. See: Respondents Supplemental Answer, Exhibit 2, at pgs. 32-33. which was denied.

On June 4, 2003, the petitioner appealed to Sosman, J., single justice of the Supreme Judicial Court for the Commonwealth of Massachusetts under excessive bail which was denied on June 18, 2003, by Sosman, J., citing denied to act after hearing. See: Respondents Supplemental Answer, Exhibit 3 and Petitioners Appendix with Transcripts of this hearing, Exhibit 3.

On July 28, 2003 the petitioner sought further appellate review by the full bench of the Supreme Judicial Court for the Commonwealth of Massachusetts the states highest court.

See: Respondents Supplemental Answer, Exhibit 4.

On October 16, 2003, the brief on appeal was delivered to the Supreme Judicial Court for the Commonwealth of Massachusetts by then counsel, John M. Goggins, Esq.

On March 2, 2004, the Commonwealth of Massachusetts and the Worcester District Attorney's Office "waived" its response to the appellants brief in SJC-09074.

On March 5, 2004, counsel, Attorney, John M. Goggins, withdrew as counsel in both the petitioners criminal case and from his appeal before the Supreme Judicial Court for the Commonwealth of Massachusetts in SJC-09074. On May 3, 2004, Attorney, James Gribouski, was appointed by the Worcester Superior Court Department to represent Mr. Leo in his criminal matters pending before "that" Court. No new counsel has ever been appointed to represent Mr. Leo, in his appeal before the Supreme Judicial Court for the Commonwealth of Massachusetts in SJC-09074, effectively forcing Mr. Leo, to proceed "pro se" where former counsel John M. Goggins, formally abandoned Mr. Leo, in that Court.

On ~~APRIL 23~~ , 2004, the petitioner filed his Amended Brief to the Supreme Judicial Court for the Commonwealth of Massachusetts and has to date not received an answer from that Court regarding his appeal.

Where pre-trial bail is challenged as excessive, relief must be "speedy" if it is to be effective, Stack v. Boyle, 342 U.S.1. This state appeal process has taken over 2 years and is no longer effective to protect petitioners Federal Rights 28, U.S.C. § 2254(b)(1).

#### ARGUMENT

Petitioner has met his exhaustion requirement by fairly "presenting" all claims to the states highest court. Under the terms of 28, U.S.C. § 2254(b), exhaustion of state remedies is not a necessary precondition to the filing of a federal habeas corpus petition, but instead a condition that must be fulfilled before "relief" may be granted. Sharpe v. Buchanan, 317 U.S. 238. The petitioner has met this requirement, but if this Honorable Court decides to wait for the Supreme Judicial Court for the Commonwealth of Massachusetts ruling on his appeal before hearing this petition for writ of habeas corpus, the petitioner asks that a stay/abeyance be granted instead of dismissal. Rose v. Lundy, supra, 455 U.S. at 520, discusses the use of abeyance for judicial economy concerns and in Duncan v. Walker, 121 S.Ct. 2120, 2130 (2001), the Court finds there is reason for the federal courts to avoid potential for injustices by retaining jurisdiction over a "meritorious" claim and staying further proceedings pending

complete exhaustion of state remedies. See also, Edwards v. Balisok, 520 U.S. 641, 649; Lambrix v. Singletary, 520 U.S. 518, 521; Christy v. horn, 115 F.3d 201, 207; Calderon v. U.S. District Court 107 F.3d 756, 760, 522 U.S.907.

CONCLUSION

For the foregoing reasons, the petitioner, Anthony Leo, respectfully requests that this Court not deny the instant Petition for Writ of Habeas Corpus for failure to exhaust state remedies and grant a Stay/Abeyance if it requires petitioner to wait for the Supreme Judicial Court for the Commonwealth of Massachusetts to render its decision in his appeal, before it hears this petition.

August 4<sup>th</sup>, 2004

Respectfully Submitted  
by the Petitioner,  
*Anthony M. Leo*  
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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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COMMONWEALTH OF  
MASSACHUSETTS,

Respondent.

Civil Action No. 04-11006-JLT

CERTIFICATE OF SERVICE

I, Anthony Leo, hereby certify that I have served one true copy of the foregoing documents upon Maura D. McGlaughlin, Assistant District Attorney, Criminal Bureau, One Ashburton Place, Boston, Massachusetts 02108, by first class mail, postage prepaid on this 4<sup>th</sup> day of August, 2004.

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August 4th, 2004